

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

RHONDA HENDERSON; ROBERTA
FAULKES; and RACHEL CHURCH on
behalf of themselves and all others
similarly situated,

Plaintiffs,

Case No. 2:20-cv-12649
Hon. Sean F. Cox
Mag. Judge R. Steven Whalen

vs.

VISION PROPERTY MANAGEMENT, LLC,
VPM HOLDINGS, LLC, FTE NETWORKS, INC.,
US HOME RENTALS, LLC, KAJA HOLDINGS,
LLC, KAJA HOLDINGS 2, LLC, MI SEVEN, LLC,
IN SEVEN, LLC, RVFM 4 SERIES, LLC, ACM
VISION V, LLC, ACP ROADMASTER, LLC, ACP
NASH, LLC, ACP MP INVESTMENTS, LLC, DSV
SPV 1, LLC, DSV SPV 2, LLC, DSV SPV 3, LLC,
BOOM SC, ALAN INVESTMENTS III, LLC,
ARNOSA GROUP, LLC, ARNOSA HOMES LLC,
MOM HAVEN 13, LP, ATALAYA CAPITAL
MANAGEMENT LP, ANTONI SZKARADEK,
and ALEX SZKARADEK,

Defendants.

**ACM VISION V, LLC'S MOTION TO DISMISS COUNT V OF AMENDED
COMPLAINT¹**

¹ ACMV has pending a Second Motion to Dismiss the First Amended Complaint (ECF 80). The response (ECF 81) correctly notes that ACMV did not address Count V in that pending motion, so this short motion is filed to complete the record.

Defendant ACM Vision V, LLC (“ACMV”), by its attorneys Brooks Wilkins Sharkey & Turco PLLC, pursuant to Fed.R.Civ.P. 12(b)(6), hereby moves to dismiss Count V of Plaintiffs’ First Amended Complaint (“FAC”) as to it, with prejudice, and with costs and attorneys’ fees to be awarded as allowed by law.

Pursuant to L.R. 7.1, the relief requested in this Motion was addressed to counsel for Plaintiffs, but concurrence was not received, thus necessitating this Motion. The complete grounds for this Motion are set forth in the Brief in Support set forth below.

WHEREFORE, ACMV respectfully requests that the Court dismiss Count V of Plaintiffs’ First Amended Complaint as to it, with prejudice, and award it all costs and attorneys’ fees as allowed by law.

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P31680

DATED: March 3, 2021

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Defendants.

**BRIEF IN SUPPORT OF ACM VISION V, LLC'S MOTION TO DISMISS
COUNT V OF AMENDED COMPLAINT**

ISSUE PRESENTED

Where Count V of the FAC contains no allegations that ACMV engaged in any credit transaction with any of the Plaintiffs or otherwise was involved in what disclosures were or were not made by the Vision Defendants at the time the credit transactions occurred, should Count V of the FAC for alleged violation of the Truth in Lending Act be dismissed as to ACMV?

MOST APPROPRIATE AUTHORITIES

15 U.S.C. § 1601 *et. seq*

On September 29, 2020, the three Plaintiffs filed a 109-page, 400 paragraph complaint against 24 Defendants. Styled as a “civil rights” action against defendant Vision Property Management (“Vision” or “VPM”) and “related entities” (Complaint, introductory paragraph). In that complaint, Plaintiffs attempted to plead 9 Counts against 24 named defendants. On October 7, 2020, this Court *sua sponte* dismissed all state law claims without prejudice. ECF 10.

On January 6, 2021, ACMV and Atalaya Capital Management (Atalaya) filed their first Motion to Dismiss. ECF 70. Two days later, the Court issued an Order permitting Plaintiffs the choice of either responding to the motion or filing an amended complaint within 21 days of the date of that Order. ECF 72. On the evening of January 29, the last day on which Plaintiffs could comply with the Court’s Order, Plaintiffs filed their 108-page, 384 paragraph FAC. ECF 77.

ACMV and Atalaya filed a Second Motion to Dismiss (ECF 80). On the eve of March 2, 2021, Plaintiffs responded to the Second Motion to Dismiss. In the Response, Plaintiffs correctly note that ACMV did not address Count V of the FAC, for alleged violation of the Truth In Lending Act, 15 U.S.C. § 1601 *et. seq.*, in the Second Motion to Dismiss. (Atalaya is not included as a defendant in Count V). This supplemental motion on behalf of ACMV is thus filed to correct that oversight.

Count V of the FAC contains no specific allegations regarding disclosures made or not made by ACMV. Indeed, as previously briefed to the Court (ECF 70

and 80), nothing in the FAC alleges that ACMV had any nexus with any of the Plaintiffs, entered into any transaction with any of the Plaintiffs, owned their Vision contracts or their homes, or otherwise had anything whatsoever to do with any of the Plaintiffs. ACMV is simply lumped in with the Vision Defendants in paragraph 355 of the FAC and not mentioned again regarding that Count of the FAC.

For all of the reasons previously briefed to the Court in the original motion to dismiss (ECF 70) and the pending Second Motion to Dismiss (ECF 80), including the lack of any nexus between ACMV and any of the Plaintiffs, as well as the impropriety of ‘group pleading’, Count V of the FAC should be dismissed as to ACMV.

WHEREFORE, ACMV respectfully requests that the Court dismiss Count V of Plaintiffs’ First Amended Complaint as to it, with prejudice, and award it all costs and attorneys’ fees as allowed by law.

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DATED: March 3, 2021

CERTIFICATE OF SERVICE

I hereby certify that on March 3, 2021, I electronically filed the foregoing paper with the Clerk of the Court using the ECF system which will send notification of such filing to all counsel of record.

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